



City of Miami Springs, Florida

The Miami Springs City Council held a **REGULAR MEETING** in the Council Chambers at City Hall on Monday, August 28, 2006, at 7:00 p.m.

1. Call to Order/Roll Call

The following were present:

Mayor Billy Bain
Vice Mayor Xavier Garcia (arrived at 7:01 p.m.)
Councilman Bob Best
Councilman Paul C. Dotson
Councilman Rob Youngs

Also Present:

City Manager James R. Borgmann
Assistant City Manager Ronald K. Gorland
Chief of Police H. Randall Dilling
Finance Director William Alonso
Interim Public Services Director Robert T. Williams
Thomas W. Nash, Parks Maintenance – Foreman/Arborist
Elderly Services Director Karen L. Rosson
City Clerk Magali Valls

2. Invocation: Councilman Dotson offered the invocation.

Salute to the Flag: The audience participated.

3. Awards & Presentations:

3A) Status Report from Springs River Festival President Connie Brandenburg

The status report from Springs River Festival President Connie Brandenburg was tabled.

4. Open Forum:

No speakers.

5. Approval of Council Minutes: (5A and 5B were simultaneously approved)

5A) 08/08/2006 – Workshop Meeting

Minutes of the August 8, 2006 Workshop Meeting were approved as written.

Councilman Best moved to approve the minutes and Councilman Youngs seconded the motion, which carried unanimously on roll call vote.

5B) 08/14/2006 – Regular Meeting

Minutes of the August 14, 2006 Regular Meeting were approved as written.

Councilman Best moved to approve the minutes and Councilman Youngs seconded the motion, which carried unanimously on roll call vote.

6. Reports from Boards & Commissions:

6A) 08/17/2006 – Historic Preservation Board – Minutes

Minutes of the August 17, 2006 Historic Preservation Board meeting were received for information without comment.

6B) 08/22/2006 – Ecology Board – Cancellation Notice

Cancellation Notice of the August 22, 2006 Ecology Board meeting was received for information without comment.

6C) 08/24/2006 – Code Review Board – Cancellation Notice

Cancellation Notice of the August 24, 2006 Code Review Board meeting was received for information without comment.

6D) 08/30/2006 – Board of Appeals – Cancellation Notice

Cancellation Notice of the August 30, 2006 Board of Appeals meeting was received for information without comment.

6E) 09/19/2006 – Education Advisory Board – Rescheduling Notice

Rescheduling Notice of the September 19, 2006 Education Advisory Board meeting was received for information without comment.

7. Public Hearings:

7A) Second Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Sections 150-041, R-1A District, 150-042, R-1B District, 150-043, R-1C District, and 150-044, R-1D District; by Clarifying the Requirement for Additional Side Yard Setback Area for Second Story Structures in all Single Family Residential Districts; Providing for an Exception to the Additional Side Yard Setback Area for Second Story Structures in all Single Family Residential Districts; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 8/14/2006 – Advertised: 8/16/2006)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that no changes were made since the first reading of the ordinance. He explained that basically the ordinance provides and codifies the variance case that allows properties abutting streets to not have to provide the additional side yard setback because of the extraordinary distance between the house, the street and the next house.

Mayor Bain opened the public hearing to those persons wishing to speak.

Helen Lawrence of 641 Nightingale Avenue asked if language was included in the ordinance stating that the exception is for properties abutting streets.

City Attorney Seiden clarified that each section included the exception provision stating *“The second-story addition is located in such a manner that a side yard area of the structure abuts a street. However, the requirement to provide an additional two and one-half feet of side setback for second-story additions remains applicable to the interior side yard areas of structures abutting streets.”*

There were no additional speakers, and the public hearing was closed.

Councilman Youngs moved to adopt the ordinance and Councilman Dotson seconded the motion which carried 5-0 on roll call vote (Ordinance No. 937-2006).

7B) Second Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150-002 (79), Definitions – Yard, Side; by Deleting a Portion of the Existing Definition and Clarifying Certain Other Definition Language; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 8/14/2006 – Advertised: 8/16/2006)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that no changes were made since the first reading. The ordinance deletes a portion of the existing definition and clarifies which areas of the eaves and overhangs are applicable in the side yard definition. All references to the location of central heating and air conditioning units were removed from the definition.

Mayor Bain opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Councilman Best moved to adopt the ordinance and Vice Mayor Garcia seconded the motion which carried 5-0 on roll call vote (Ordinance No. 938-2006).

7C) Second Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150-010, Roof Materials, Requirements, and Re-roofs; by Providing a Conditional Exception Provision for the Use of Flat Roofs on “Open Patios”; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 8/14/2006 – Advertised: 8/16/2006)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that the ordinance provides for flat roofs on open patios without screening in rear yard areas, which constitute non-living space so long as the property owner agrees that the patio would never be enclosed by executing an appropriate covenant running with the land to provide notice to future purchasers. He also added a section related to reverse frontage situations.

Mayor Bain opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Councilman Dotson moved to adopt the ordinance and Councilman Youngs seconded the motion which carried 5-0 on roll call vote (Ordinance No. 939-2006).

7D) Second Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Enacting New Code of Ordinance Section 150-034, Installation of Central Air Conditioning and Heating Units; Providing for Equipment Location on New and Existing Homesites; Establishing an Exception for Equipment Location on New Homesites; Delineating Installation Standards and Requirements; Providing for Supervision and Control of Installations; Directions to Codifiers; Repealing All Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 8/14/2006 – Advertised: 8/16/2006)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that the ordinance relates to the previous ordinance that was discussed removing the language from the definition regarding the placement of air conditioning and heating units. This ordinance provides that the location for air conditioning and heating units for new construction situations shall be in the rear yard, and in existing situations the replacement of equipment can be in the same location.

City Attorney Seiden explained that an exception is included for areas abutting streets, which allows the placement in the side yard for new construction.

Mayor Bain opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Vice Mayor Garcia moved to adopt the ordinance and Councilman Best seconded the motion.

Councilman Youngs asked to clarify that the central air conditioning and heating units to be

installed in conjunction with the construction of new residential structures shall only be located in the side yard area which abuts the street.

City Attorney Seiden said that he would clarify the language, which is not a material change that would require another public hearing.

The motion to adopt the ordinance, as amended, carried 5-0 on roll call vote (Ordinance No. 940-2006).

8. Consent Agenda:

None.

9. Old Business:

9A) Appointment to the Ecology Board by Mayor Bain for a Full 3-Year Term Ending on April 30, 2009 (Joe Podgor's seat)

Mayor Bain **deferred** his appointment to the Ecology Board.

9B) Appointment to the Ecology Board by Councilman Youngs (Group IV) for an Unexpired Term Ending on April 30, 2007 Created by the Resignation of Donna Dawson

Councilman Youngs **deferred** his appointment to the Ecology Board.

9C) Appointment to the Civil Service Board by Vice Mayor Garcia (Group III) for a Full 3-year Term Ending on June 30, 2009

Vice Mayor Garcia **deferred** his appointment to the Civil Service Board.

9D) Appointment to the Education Advisory Board by Councilman Youngs (Group IV) to Fill an Unexpired Term Ending on May 31, 2007 (Dorrene Cook's seat)

Councilman Youngs **deferred** his appointment to the Education Advisory Board.

9E) Request that Council Approve the Execution of a Contract with Design-Build InterAmerican, the Lowest Bidder from the Request for Proposals (RFP) Process, for the Design and Construction of Two Restrooms Facilities at Stafford and Dove Avenue Parks

The item was tabled until the September 11, 2006 Regular Meeting.

9F) Official Notification of Verification of Signatures – Discussion of Council Alternatives; Resolution – A Resolution of the City Council of the City of Miami Springs Calling for the Holding of an Election for the City on Tuesday, November 7, 2006; Delineating Charter Question for the Ballot of the General Election; Providing Authorization and Directions to the City Clerk; Effective Date

Attorney Seiden read the resolution by title.

City Attorney Jan K. Seiden stated that upon notification from the Miami-Dade Elections Department the resolution was corrected by adding certain language related to holding a Special Election.

Michael Gavila of 684 Morningside Drive said he did not believe the question should be on the ballot but that he would respect Council's decision if they agree to place it on the ballot and he would campaign against it.

Buzz Fleischman of 810 Pinecrest Drive stated that every citizen deserves the right to vote on the "high rise" issue. He thanked Council and the City Administration for the time and effort involved in this matter.

Donna Hernandez of 769 Pinecrest Drive said that she participated in the collection of petition signatures and 8 out of 10 people who signed were grateful and happy to sign. She stated that the people understood that the only change would be to allow them the right to vote on what happens with the zoning of the community.

City Attorney Seiden stated that the City Clerk provided a copy of the Official Notification from Miami-Dade County Supervisor of Elections Lester Sola stating that 1,055 qualified signatures were submitted.

Vice Mayor Garcia moved to adopt the resolution and Councilman Youngs seconded the motion.

Councilman Youngs stated that based on the last experience with a citizen petition he felt that it would be appropriate to ask the City Attorney if he has any idea that the question might be unconstitutional. He explained that in the previous example, Council was chastised by the judge for not asking that point and the City incurred the cost of attorney's fees and approximately \$17,000 for an election that was enjoined.

City Attorney Seiden stated that last week he would have advised Council that the question was unconstitutional on its face and there was no need to place it on the ballot. Since that time, he spoke with Councilman Dotson who mentioned that he had heard about a new case regarding these types of issues and he provided a copy for his review.

Attorney Seiden provided a copy of the case from St. Pete Beach. He said that the area is located in a different court district and while the case is not 100% precedent in this area, it has influential aspects. Attorney Seiden felt that the decision was well written.

Attorney Seiden said that the proposed amendments all brought into play the same issues as the prior case, which is how does it square with F.S.S. 163.3167 (12) that is part of the Comprehensive Planning Act of the State of Florida and prohibits referendums or initiative situations when dealing with five or fewer parcels. In this case, the Court dealt with that issue and concluded that the proposed amendments were in fact inferentially permitted by the statute and therefore were not inconsistent with law.

One basis of denial or the determination of unconstitutionality of the prior Charter amendment provision was that it was unconstitutional because no local government provision can be inconsistent or co-exist with State law. The Court said that it is not necessarily inconsistent and does co-exist. It is clear that the standard is for stopping the placement on a ballot and if there are good faith questions of constitutionality they can and should be raised prior to the election in order to save the cost and efforts of the people. Those provisions that can be challenged on that basis to not be put on the ballot must be facially unconstitutional in their entirety and therefore

should be prohibited from being placed on the ballot for consideration.

Although the recent case is likely to be appealed to the State Supreme Court, it cannot be ignored and the reasoning is persuasive in regard to those issues that were dealt with in the prior case and would be dealt with any challenge of the particular pending language that is proposed by the citizen petition.

Attorney Seiden stated that it would be imprudent for Council to ignore the arguments and the language in the case and it would be unfair not to acknowledge that the potential impact of the other case upon the interpretation and scope of F.S.S. 163.3167 (12) would not be carried forward or expanded or reduced. It does have an impact that should not be ignored. It would be improper to make a determination that the proposed amendment is facially unconstitutional in its entirety and therefore meriting pre-election removal from the ballot. It would be unfair to advise Council that they are legally justified in prohibiting the matter from being placed on the ballot.

To sum up his opinion, Attorney Seiden stated that the question is not entirely facially unconstitutional and Council would be doing a disservice to themselves and the citizens if it is not allowed to be placed on the ballot. However, the placement on the ballot and even the approval of the citizens will not prevent the possibility of litigation being filed to contest it based on a number of grounds. He said that it would be a procedurally proper act to place the question on the ballot and at this point there are no substantial grounds to contest the placement on the ballot.

Councilman Best asked Attorney Seiden if he felt the basic language of the question is consistent with the provisions of F.S.S. 163.3167 (12).

Attorney Seiden stated that no one could disagree with the fact that the proposed language is substantially less complicated, while the last question was totally vague and uncertain. He said the provision in the state statute says that an initiative or referendum process in regard to any development order or local comprehensive plan amendment or map amendment that affects five or fewer parcels of land is prohibited. In this case the Court said that the six or more can co-exist with the statute because it only deals with five or less. He said that because the provision deals with numbers that it leaves the statute subject to interpretation and the court basically found a way around the provision to allow the charter amendments in St. Pete Beach to be put on the ballot, although it could be appealed.

The motion carried 5-0 on roll call vote (Resolution No. 2006-3322).

9G) Discussion of September 23, 2006 Re-opening of the Golf Course

City Manager Borgmann stated that the Founder's Day Golf Tournament is scheduled for September 23, 2006, and an event is planned to celebrate the grand re-opening of the Course because the new greens are ready for play. He explained that the concept is to promote awareness for Junior Golf.

10. New Business:

10A) First Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 30-01, Establishment of Administrative Departments; by Officially Establishing Additional City Administrative Departments; Correcting the Names of Existing Departments; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that the ordinance is basically a "housekeeping" measure to update the Code so that it is in accordance with the Charter. He explained that the departments of Human Resources, Elderly Services, Planning, Information Technology, and Golf were added and the names were corrected for the Department of Public Services and Building/Zoning/Code Compliance.

City Manager Borgmann explained that all the departments were in existence for a while except for Golf and Information Technology. He said that the Code requires Council to vote on the establishment of new departments even though they were approved through the budget process.

Attorney Seiden clarified that the proposed ordinance fully complies with the organizational chart of the City.

Vice Mayor Garcia moved to approve the ordinance on first reading and Councilman Youngs seconded the motion which carried 5-0 on roll call vote.

10B) First Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 30-02, Functions of the Departments; by Providing Descriptions of the Functions of the Newly Established Administrative Departments of the City; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that Section 30-01 of the Code establishes the departments and Section 30-02 gives the description of each department's function.

Councilman Youngs moved to approve the ordinance on first reading and Vice Mayor Garcia seconded the motion which carried 5-0 on roll call vote.

10C) First Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Adopting Miami-Dade County Code Article XIV. Adult Group Homes, which Includes Code Sections 21-251 Through 21-254; for Applicability and Enforcement Within the City; Providing for Adoption of all Future Amendments of the Article or Code Sections; Authorizing Methods of Enforcement; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date

City Attorney Jan K. Seiden read the ordinance by title.

City Attorney Seiden stated that a citizen notified the City that the County has provisions to regulate basic standards for adult group homes. The provisions of the County Code would be adopted by this reference, which will be enforceable by the City.

Attorney Seiden said that Miami Dade County Code Section 21-254 deals with signage. It appears that none of the homes in the City have the proper signage and in order to enforce the regulation, the City is adopting the provisions of the County Code. He explained that if the ordinance passes on first and second reading that a resolution would be presented for enactment that includes the County Code Section within the Supplemental Citation Ticketing System Appendix of violations and fines. The Code Compliance Department would enforce the provision by issuing tickets.

Councilman Youngs moved to approve the ordinance on first reading and Vice Mayor

Garcia seconded the motion.

To answer Councilman Dotson's question, City Manager Borgmann stated that a license is not required by the City. He explained that adult living facilities (ALF) are required to have signage to notify first responders such as police or fire units.

Mr. Borgmann said that Chapter 400 of the Florida Statutes permits group homes anywhere in the City and they are to be treated the same as single family homes as long as they do not exceed the allowed number of people and are not within 1,000 feet of another facility.

Further discussion ensued regarding the regulations for adult living facilities.

The motion carried 5-0 on roll call vote.

10D) Resolution – A Resolution of the City Council of the City of Miami Springs Urging the Legislature of the State of Florida to Enact Legislation Prohibiting the Usage of Cellular Telephones by Motor Vehicle Drivers in School Zones; Providing Directions to the City Clerk; Effective Date

Attorney Seiden read the resolution by title. He explained that the resolution is a result of a request from Miami Beach Commissioner Steinberg.

Vice Mayor Garcia moved to adopt the resolution and Councilman Best seconded the motion which carried 5-0 on roll call vote (Resolution No. 2006-3323).

10E) First Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150-002(C)(38), Definitions – Floor Area; to Provide a More Detailed Description of the “Attic Space” Subsection Set Forth in Section 150-002(C)(38); Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date

Attorney Seiden read the ordinance by title.

Attorney Seiden stated that the following language was added to define attic space: “to be utilized for storage, the location of mechanical, electrical, plumbing, air conditioning, or other building

equipment, and for all other usages which support required building services; in no case shall this space be utilized as an area designated for occupancy or living area.”

Councilman Dotson moved to approve on first reading and Councilman Best seconded the motion which carried 5-0 on roll call vote.

10F) Appointment to the Code Enforcement Board by Councilman Dotson (Group II) to Fill an Unexpired Term Ending on September 30, 2008, Created by the Resignation of Walter Sharpe

Councilman Dotson **deferred** his appointment to the Code Enforcement Board.

10G) Resolution – A Resolution of the City Council of the City of Miami Springs Amending the Schedule of Charges and Fees for the Operation of the Miami Springs Golf and Country Club; Effective Date

City Manager Borgmann stated that the resolution would be deferred until the next meeting and in the interim the new rates would be instituted under his authority as City Manager.

10H) Project I.C.E. – A Cell Phone Emergency Contact Program

The item was tabled.

10I) Recommendation that Council Approve the Disability Advisory Board Recommendation for Spending \$2,786.88 in Parking Violation Revenues for Additional Accessibility Equipment for the Aquatic Center

City Manager Borgmann stated that this is a recommendation that Council approve the Disability Advisory Board recommendation for spending \$2,786.88 in parking violation revenues for additional accessibility equipment for the Aquatic Center.

City Manager Borgmann said that the items approved by the Disability Board are related to exercise equipment for the pool that will supplement the new chair lift that was purchased through last year's funding. The equipment is specifically for people with mobility issues who can exercise in the water.

Disability Advisory Board member Joan Paul of 781 Plover Avenue stated that the equipment detail includes a treadmill, aqua bike and safety island. She explained that three items are listed under additional assistive devices, which are water walkers (4), belts (10) and padded float bars (10) totaling \$766.04. Ms. Paul explained that the total is correct, but that four aqua steps totaling \$178.00 should be included in the list.

Ms. Paul asked Chief of Police Dilling to remind the Police Officers that handicap parking enforcement generates more funds for the City of Miami Springs.

Vice Mayor Garcia moved to approve and Councilman Best seconded the motion, which carried 5-0 on roll call vote.

11. Other Business:

11A) Scheduling of Board of Appeals Meeting to Hear Case No. 50-V-06 – 22 Pinecrest Drive (Variance denied by the Board of Adjustment on August 7, 2006)

City Manager Borgmann stated that an appeal was filed in Case No. 50-V-06 regarding 22 Pinecrest Drive for a variance that was denied by the Board of Adjustment on August 7, 2006. He requested that Council schedule a date to hear the appeal.

Council agreed to schedule the Board of Appeals meeting for September 11, 2006.

12. Reports & Recommendations:

12A) City Attorney

No report.

12B) City Manager

Hurricane Ernesto

City Manager Borgmann said that the 5:00 p.m. advisory predicted that Hurricane Ernesto will be a tropical storm when it arrives, but the necessary precautions should be taken because the wind and rain could still cause a lot of damage. He reported that the Police and Public Services personnel were ready and the City has an agreement for debris removal with Arbor Tree Service.

Aladdin Hotel

City Manager Borgmann referred to information from the City's files regarding the Aladdin Hotel. He said that files of Post, Buckley, Schuh and Jernigan, Inc. were researched to make sure that every possible document was available in order to get to the bottom of the question. He explained that Council received his report, as well as the City Attorney's report, and to call if there are any questions.

Soccer Registration

City Manager Borgmann announced that Soccer registration for ages 3-17 is still going on.

Sympathy

On behalf of the Administration and Council, City Manager Borgmann extended his sympathy to Vice Mayor Garcia in the passing of his wife's grandmother.

12C) City Council

Sympathy

Councilman Dotson reiterated the City Manager's expression of sympathy to Vice Mayor Garcia.

Aladdin Hotel

Councilman Dotson said that he hopes the additional information on the Aladdin Hotel would answer all the questions that were raised.

City Manager Borgmann stated that his letter specifically answers the questions that were posed in the e-mails.

Sympathy

Councilman Best extended condolences to Vice Mayor Garcia.

Hurricane Ernesto

Councilman Best urged everyone to stay safe and hopefully the storm would take a turn to the left.

Happy Birthday

Mayor Bain officially wished the City of Miami Springs a Happy 80th Birthday.

Hurricane Ernesto

Mayor Bain asked everyone to work together to prepare for the hurricane and to put up their shutters.

13. Adjourn.

There being no further business to be discussed the meeting was adjourned at 8:02 p.m.

Billy Bain
Mayor

ATTEST:

Magali Valls, CMC
City Clerk

Approved as written during meeting of: 9/11/2006

Transcription assistance provided by S. Hitaffer

Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.